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APR 03 2009	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

Mathew A. Rawlinson  
3730 W. Rue DE Lamour Ave.  
Phoenix, AZ. 85029-1115  
623-570-9361

Pro Per

UNITED STATES DISTRICT COURT, DISTRICT OF ARIZONA  
IN AND FOR MARICOPA COUNTY, ARIZONA

**CIV '09 0691 PHX ROS**

Mathew A. Rawlinson,  
Plaintiff,

vs.

Specialized Loan Servicing, LLC  
and Does 1 through 10,  
inclusive,

Defendants.

) Case No.:  
)  
) COMPLAINT TO ENJOIN  
) FORECLOSURE:  
) 1. Unfair Debt Collection  
) Practices  
) 2. Predatory Lending Practices  
) 3. RICO Violations  
)  
) Hearing:  
) Time:  
) Dept:  
) Judge:  
) Action Filed:  
) Trial Date:  
)  
) [Unlimited Jurisdiction Case]  
)  
)

GENERAL CHARGING ALLEGATIONS

AS TO ALL CAUSES OF ACTION

(AS TO ALL NAMED DEFENDANTS)

1. The Plaintiff Mathew A. Rawlinson in the above captioned cause, now and at all times was the owner and resident of real property commonly known as 3730 W. Rue DE Lamour Ave. Maricopa County, Phoenix, Arizona (Subject Property). The legal description for the subject property is Lot 45, of Thunderbird

1 Heights unit two, according to the Plat of record in the office  
2 of the County Recorder of Maricopa County, Arizona, Recorded in  
3 book 137 of maps, page 42. The assessor's parcel number is 149-  
4 25-158.

5 2. Defendant Specialized Loan Servicing, LLC, hereinafter  
6 (SLS) is a Delaware Limited Liability corporation  
7 registered to do business in the State of Arizona as a  
8 foreign entity, and the mortgage servicer for  
9 plaintiff's "federally related mortgage loan" account,  
10 as those terms are defined in the RESPA, 12 U.S.C. §  
11 2602(1) and 12 U.S.C. § 2605(i)(2), having offices in  
12 Littleton, Colorado and Atlanta, Georgia. At all times  
13 material to this action defendant SLS regularly  
14 transacted business in the State of Arizona.

15 3. Defendant SLS is a "debt collector" of plaintiff's debt  
16 as those terms are defined in the FDCPA, 15 U.S.C. §  
17 1692a.

18 4. Plaintiff does not know the true names, capacities, or  
19 basis for liability of defendants sued as Doe 1 through 10.  
20 Each fictitiously named defendant is in some manner liable to  
21 plaintiff, or claims some right, title, or interest in subject  
22 property, or both. Plaintiff will amend this complaint to  
23 allege their true identities, capacities and roles as and when  
24 they are ascertained.

25 5. Defendant SLS, identified on a certain Exhibit 1 has  
26 notified plaintiff of its intention to sell plaintiff's home  
27 in a foreclosure sale.

28 6. Plaintiff alleges that all defendants named and unnamed  
in this complaint are in some way involved in the actions

1 complained of herein as either independent actors, or as  
2 agents or principals of the other in foreclosure  
3 proceedings against plaintiff.

4 7. The "Security Instrument" is the deed of trust.

5 8. The "Note", is the negotiable instrument, which is  
6 referred to in the Security Instrument identified in the  
7 Notice of Sale (Exhibit 1) and which allegedly created  
8 plaintiff's obligation to repay a debt to a beneficiary.

9 9. Plaintiff is informed, believes and alleges that each  
10 defendant in pursuing non judicial foreclosure represented  
11 that they had the right to payment under the Note of which  
12 was secured by the Security Instrument that is identified  
13 in Exhibit 1 to this complaint.

14 10. Upon information and belief, plaintiff alleges that  
15 defendants and each of them have not provided plaintiff  
16 with a copy of the original note referred to in the  
17 Security Instrument identified in Exhibit 1, any access to  
18 said Note, any evidence that such Note is, or ever was, in  
19 existence, and yet they are attempting to enforce the  
20 obligations of said Note through a non-judicial  
21 foreclosure. Plaintiff requested the identity of said  
22 holders of the "Note" along with an accounting by way of a  
23 Qualified Written Request under the RESPA and TILA laws, on  
24 Feb.4, 2009. A copy of which is attached as Exhibit "2" and  
25 incorporated here by reference. If said Note was available,  
26 Defendant would have provided Plaintiff with a copy along  
27 with account activity as Plaintiff requested meting the  
28 legal requirements of federal RESPA and TILA laws.  
Furthermore Defendant would have attached it here as an

1 Exhibit. A.R.S. §§ 47-3301 clearly sets forth the  
2 requirements to enforce a note: the enforcing party must be  
3 a holder in due course on the note, a non-holder in  
4 possession of the note with the rights of a holder in due  
5 course must satisfy the requirements of A.R.S. §§ 47-3309  
6 or § 47-3418, subsection D relating to a lost or destroyed  
7 note. Defendants and each of them have not provided any  
8 evidence of their legal right(s) to enforce any note(s) by  
9 demonstrating possession of any note(s) by any particular  
10 defendant or entity.

11 11. Upon information and belief, none of the Defendants  
12 have a present right to initiate foreclosure under the  
13 Security Instrument identified in the Notice of Intent to  
14 Foreclose attached as Exhibit 1, nor does any defendant  
15 have the right to direct any defendant to foreclose and  
16 sell the subject property of plaintiff.

17 12. Plaintiff is informed, believes, and alleges that in  
18 all wrongful acts alleged in this complaint, the defendants  
19 and each of them have utilized the United States mail in  
20 furtherance of their conspiracy to both attempt and to  
21 affect unlawful collection on negotiable instruments when  
22 they are not entitled under law to do so, and, assuming  
23 *arguendo* that any defendant does have the right to proceed  
24 to foreclose under the note, defendants and each of them  
25 have and have attempted to profit from those actions in  
26 amounts greater than their legal rights under the note to  
27 do so.

28 13. Plaintiff is informed, believes, and alleges that the  
defendants and each of them, in so acting in this case and

1 with respect to many other mortgage or trust deed security  
2 instruments engaged in a pattern and practice of utilizing  
3 the non-judicial foreclosure procedures of this state to  
4 foreclose on properties when they do not, in fact have the  
5 right to do so, knowing that the property owners affected do  
6 not have the knowledge and means to contest the right of said  
7 defendants to do so.

8 14. Plaintiff is informed, believes, and alleges that

9 Defendants and each of them, in committing the acts alleged  
10 in this and in other cases, are engaging in a pattern of  
11 unlawful activity, and have known or should have known that  
12 they had no right to initiate foreclosure proceedings unless  
13 and until they were in possession of the original note  
14 properly endorsed or assigned to them as of a date preceding  
15 the notice of default recorded by the Trustee.

16 15. Plaintiff is informed, believes, and alleges that the  
17 true facts were that none of the defendants were in possession  
18 of the note or non-holders of the note entitled to payment, as  
19 those terms are used in A.R.S. §§§ 47-3301, 47-3309, 47-3418,  
20 subsection D, and therefore, defendants and each of them were  
21 proceeding to foreclosure non-judicially without right under  
22 the law.

23 16. The defendants and each of them, misrepresented the  
24 facts regarding their legal right to enforce the note and to  
25 foreclose on plaintiff's property intending either to force  
26 plaintiff to pay large sums of money to defendants and each of  
27 them to which they were not entitled under the law, or to  
28 abandon plaintiff's property to foreclosure sale.

17. Plaintiff is informed, believes, and alleges that defendant SLS identified in Exhibit 1, has acted unlawfully to collect on and attempt to satisfy an alleged debt by taking either or both plaintiff's real property through foreclosure and plaintiff's monetary personal property through debt collection activities and communications.

18. The real property owned by plaintiff that is identified in Exhibit 1 is unique. Therefore, should defendants and each of them, not be enjoined, plaintiff and his family will suffer irreparable injury for which there is no adequate remedy in law when defendants proceed to sell or causes to be sold the subject property at foreclosure sale.

19. As a result of the aforementioned facts and allegations, plaintiff has been damaged in having to seek legal assistance before bringing this action along with court cost and fees to enjoin the threatened non-judicial foreclosure of the subject property, and will have to incur additional fees to stop the wrongful acts of the defendants and each of them. Plaintiff has been damaged in other ways that are not readily apparent at this time, but will amend this complaint to allege further damages as they are determined.

**FIRST CAUSE OF ACTION**  
**UNFAIR DEBT COLLECTION PRACTICES**  
**(AS TO ALL NAMED DEFENDANTS)**

20. Plaintiff realleges paragraphs 1-19 of the General Charging Allegations as if fully set forth herein.

1 21. Plaintiff is informed, believes, and alleges that  
2 defendant SLS is a debt collector. Defendant identified itself  
3 as a debt collector in Exhibit 1; therefore, plaintiff  
4 realleges that defendant SLS has not acted solely in its  
5 capacity as a trustee.

6 22. Plaintiff is informed, believes, and alleges that  
7 defendants and each of them did not provide the proper, or  
8 any, notice required under Federal Fair Debt Collections Act.  
9 15 U.S.C. Title 41, Subchap. V, §§ 1692g informing plaintiff  
10 of plaintiff's right to request validation of the debt which  
11 defendants and each of them were attempting to collect.

12 23. Plaintiff is informed, believes, and thereupon alleges  
13 that the defendants and each of them, in taking the actions  
14 aforementioned, have violated provisions of Arizona's Consumer  
15 Fraud Act, including but not limited to A.R.S § 44-1521 et  
16 seq, and the Federal Fair Debt Collections Act, 15 U.S.C.,  
17 Title 41, Subchap. V, §§ 1692 et seq, and the Real Estate  
18 Settlement Procedures Act (RESPA), 12 U.S.C. §§ 2601-2617.

19  
20 **SECOND CAUSE OF ACTION**

21 **PREDATORY LENDING PRACTICES**

22 **(AS TO ALL NAMED DEFENDANTS)**

23 24. Plaintiff realleges paragraphs 1-19 of the General  
24 Charging Allegations and paragraphs 20-23 of the First Cause  
25 of Action as fully set forth herein.

26 25. Assuming *arguendo* that the defendant on whose behalf  
27 defendant SLS is pursuing foreclosure proceedings against  
28 plaintiff does have the right under the law of negotiable  
instruments in this state, by possession, endorsement,

1 assignment, agency or otherwise, to receive payment under a  
2 valid note, payment of which is secured by the security  
3 instrument that is identified in Exhibit 1, and to initiate  
4 foreclosure under power of sale contained therein, if any,  
5 then that defendant is subject to defenses that would have  
6 been available against the initial lender identified as  
7 SPECTRUM FINANCIAL GROUP, INC. The liability of assignees for  
8 the predatory lending practices of their predecessors is  
9 specifically provided for in 15 U.S.C. § 1641.

10 26. Plaintiff is informed, believes, and thereupon alleges  
11 that defendant SLS has engaged in deceptive practices with  
12 respect to plaintiff in violation of the Home Ownership and  
13 Equity Protection Act (HOEPA), 15 U.S.C. §§ 1637, the Truth in  
14 Lending Act (TILA), 15 U.S.C. § 1601, Regulation Z, 12 C.F.R.  
15 226, and the Federal Trade Commission Act (FTC Act), 15 U.S.C.  
16 §§ 41-58, the specifics of which are unknown, but which are  
17 subject to discovery and with respect to which the specifics  
18 will be alleged by amendment to this complaint when  
19 ascertained.

20 27. One or more of the predatory lending practices referred  
21 to in the previous paragraph permits, under the law, one or  
22 more defenses or remedies, the specifics of which will be  
23 alleged by amendment to this complaint when ascertained.

### 24 25 THIRD CAUSE OF ACTION

#### 26 RICO

#### 27 (AS TO ALL NAMED DEFENDANTS)

28 28. Plaintiff realleges paragraphs 1-19 of the General  
Charging Allegations, paragraphs 20-23 of the First Cause of



1 Action and paragraphs 24-27 of the Second Cause of Action, as  
2 if fully set forth herein.

3 29. In doing the aforesaid acts, defendants and each of  
4 them were participating in and have participated in a scheme  
5 of racketeering as the term is defined in the federal  
6 Racketeer Influenced and Corrupt Organizations (RICO), 18  
7 U.S.C. §§ 1961 et seq, and the Arizona Anti-Racketeering Act  
8 (AZRAC), A.R.S. §§ 13-2301 through 2316, and in so doing, have  
9 violated federal and state of Arizona RICO law.

10 30. Plaintiff alleges that defendants and each of them have  
11 violated RICO, including but not limited to 18 U.S.C. §  
12 1961(1)(A), relating to mail fraud as defined in 18 U.S.C. §  
13 1341. Upon information and belief, in all the wrongful acts  
14 alleged in this complaint, the defendants and each of them  
15 have utilized the United States mail in furtherance of their  
16 conspiracy to both attempt and to affect unlawful collection  
17 on negotiable instruments when they were not entitled under  
18 law to do so, and, assuming *arguendo* that any defendant does  
19 have the right to proceed to foreclose under the Note,  
20 defendants and each of them have and have attempted to profit  
21 from those actions in amounts greater than their rights under  
22 the Note to do so.

23 31. Plaintiff is informed, believes, and alleges that the  
24 defendants and each of them, in so acting in this case and  
25 with respect to many other mortgage or trust deed security  
26 instruments engaged in a pattern and practice of utilizing the  
27 non-judicial foreclosure procedures of this State to foreclose  
28 on properties when they do not, in fact, have the right to do  
so, knowing that the property owners affected do not have the

1 knowledge and means to contest the right of said defendants to  
2 do so.

3 32. Plaintiff alleges that defendants and each of them have  
4 violated RICO, including but not limited to 18 U.S.C. §§  
5 1962(b) and (d) through attempts to collect unlawful debts.

6 33. Plaintiff alleges that defendants and each of them have  
7 violated RICO, 18 U.S.C. § 1961(1)(A), relating to prohibited  
8 interference with commerce, robbery, or extortion, as defined  
9 under 18 U.S.C. § 1951.

10 34. Plaintiff alleges that defendants and each of them have  
11 also violated RICO, 18 U.S.C. § 1961(1)(A), relating to fraud  
12 in the sale of securities.

13 35. Plaintiff is informed, believes, and alleges that  
14 defendants and each of them, in committing the acts alleged in  
15 this and in other cases, are engaging in a pattern of unlawful  
16 activity.

17 36. Plaintiff is therefore entitled to the available  
18 remedies under RICO in civil actions.

19  
20 **WHEREFORE**, Plaintiff prays that:

- 21 1. Defendants and each of them, be prohibited from conducting  
22 any sale of the subject property pending the outcome of  
23 this case;
- 24 2. Defendants and each of them, be permanently enjoined from  
25 any and all attempts to foreclose on the subject real  
26 property unless and until it can present proof that it is  
27 entitled, under the law of negotiable instruments in force  
28 in Arizona to enforce the underlying promissory note

1 described in the security instrument that is identified in  
2 Exhibit 1;

3 3. That Plaintiff be awarded monetary damages against the  
4 defendants and each of them, jointly and severally, that  
5 plaintiff incurred due to the need to bring this action for  
6 injunctive relief according to proof,

7 4. That the plaintiff be awarded statutory damages for Unfair  
8 Debt Collection Practices under federal and Arizona  
9 statutes;

10 5. That attorney fees be awarded plaintiff as permitted by  
11 law;

12 6. That plaintiff be awarded treble damages as permitted by  
13 law,

14 7. That prejudgment interest be awarded plaintiff as permitted  
15 by law;

16 8. For such other and further equitable relief, declaratory  
17 relief and legal damages as may be permitted by law and as  
18 the court may consider just and proper.

19  
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21  
22 Dated: 4-3-09

23 Mathew A Rawlinson

24 Mathew A. Rawlinson, Plaintiff  
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**VERIFICATION**

Mathew A. Rawlinson, being first duly sworn upon oath, deposes and says as follows:

1. I am named Mathew A. Rawlinson in the civil action known as: the Complaint to Enjoin Foreclosure.
2. I have read the foregoing document, and know the contents thereof.
3. The statements and matters alleged therein are true of my own knowledge, except as to those matters stated upon information and belief and, as to such matters, I believe them to be true.

Dated this 3 day of April, 2009.



Mathew A. Rawlinson, Plaintiff

**AFFIDAVIT**

The Plaintiff in the above mentioned Complaint to Enjoin Foreclosure has appeared before me, being identified by a valid A3 DRIVERS LIC., on this 3 day of April, 2009, and did affirm the truthfulness of the statements contained herein under the penalty of perjury by affixing his seal to this document in my presences.

1 Mathew A. Rawlinson

*Mathew A Rawlinson*

2 Dated: *4-3-09*

3  
4 NOTARY

5 *Patrice Love*

My Commission Expires:

*4/10/12*

7 COUNTY OF MARICOPA

8 STATE OF ARIZONA

